JOHN R. SNEDEGAR

IBLA 83-580 Decided February 28, 1984

Appeal from decision of the Oregon State Office, Bureau of Land Management, rejecting hardrock minerals prospecting permit. OR 36006 (WA).
Affirmed.

1. Mineral Lands: Prospecting Permits

An application for a hardrock prospecting permit is properly rejected where the lands described therein do not exist. Applicant bears the responsibility of furnishing a proper land description and BLM is without authority to speculate on applicant's intention or to alter a land description.

2. Mineral Lands: Prospecting Permits

A new application for prospecting permit filed pursuant to 43 CFR 3511.2-4 within 30 days of rejection of an earlier application for a curable defect obtains priority as of the date of filing of the new application.

APPEARANCES: Martha L. Marshall, Esq., Oklahoma City, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GRANT

John R. Snedegar has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated March 24, 1983, rejecting hardrock prospecting permit application OR 36006 (WA).

On March 3, 1983, appellant filed a hardrock prospecting permit application for 280 acres of land. The land was described by applicant as to section, township, and range as follows: "Section 18-22 N-20 W, Chelan County, Washington."

In its March 1983 decision, BLM rejected appellant's application because appellant had supplied an incorrect land description. The decision stated: "There is no Township 22 North, Range 20 West within the State of Washington."

In his statement of reasons for appeal, appellant contends that the intent of his application was clear. The prospecting permit application indicated that the lands described were in Chelan County, Washington, and

administered by the Forest Service. Appellant argues that since the placement of the lands in range 20 west would neither be in Chelan County, Washington, nor under the administration of the Forest Service, it is obvious that the land he intended to describe could only be in range 20 east. Appellant contends that the typographical error in the description was a technical deficiency not disqualifying the application, citing the precedents of Irvin Wall, 68 IBLA 311 (1982), and Irvin Wall, 68 IBLA 308 (1982). Further, appellant alleges that his second application filed April 21, 1983, should be treated as an amendment of the original application to conform the land description to the clear intent of the applicant, citing Duncan Miller, 70 I.D. 512 (1963).

Appellant argues in the alternative that, should the Board find that his application was properly rejected by BLM, his second application filed April 21, 1983, is entitled under 43 CFR 3511.2-4(b), to receive priority over any intervening prospecting permit applications for the same parcel. Appellant contends further that shortly after submitting his prospecting permit application he contacted several Oregon State Office, BLM, employees who informed him that his application appeared to be in order.

The land description in applications for hardrock prospecting permits is required to conform to the provisions of 43 CFR 3501.2-4 which provides in relevant part that: "If the land has been surveyed under the rectangular system of public land surveys, and the description can be conformed to that system, the land must be described by legal subdivision, section, township, and range." 43 CFR 3501.2-4(a).

The land intended to be described in appellant's prospecting permit application has plainly been "surveyed under the rectangular system of public land surveys." However, the reference in the land description in appellant's application to T. 22 N., R. 20 W., is simply a misstatement of the land appellant intended to describe.

[1] An application for a hardrock prospecting permit is properly rejected where the lands described therein do not exist. See Fayette I. Bristol, 62 IBLA 317 (1982). Applicant bears the responsibility of furnishing a proper land description and BLM is without authority to speculate about an applicant's true intentions or to alter a land description to validate it. Id. The precedent of Irvin Wall, 68 IBLA 308 (1982), involving an unambiguous land description where identification of the meridian was omitted is properly distinguished from the present case where the wrong cardinal direction was stated resulting in identification of a nonexistent tract. The case of Irvin Wall, 68 IBLA 311 (1982), is distinguishable on the same basis.

Appellant contends that his subsequently filed application should be considered as an "amendment" of the original application to correct the application to conform to the obvious intent of the applicant and that the original application should be adjudicated as amended to correct the typographical error. Appellant cites the precedent of Duncan Miller
, supra. Although the Department in Duncan Miller did allow the amendment of an oil and gas lease offer to correct a typographical error to conform the land description to applicant's intent, the holding was expressly conditioned upon the absence of an intervening application filed for the land intended to be described. 70 I.D. at 514. Thus, this precedent will not avail appellant in establishing priority of filing before the second application was filed.

[2] Appellant's argument that he should have been allowed to file his new application pursuant to 43 CFR 3511.2-4(b), without being subject to intervening applications must also be rejected. The regulation at 43 CFR 3511.2-4(b) states:

> (b) Curable defects. If an application is defective to the extent set out in paragraph § 3511.2-4(a) of this section, the applicant will be given an opportunity to file a new application within 30 days from service of the rejection, and the fee and rental payments on the old application will be applied to the new application if the new application shows the serial number of the old application. The advance rental will be returned unless within the 30-day period another application is filed.

After his application was rejected by the BLM decision of March 24, 1983, appellant had 30 days from service of the rejection within which to file a new application so that the fee and rental payments on the old application could be applied to the new. Although this regulation at 43 CFR 3511.2-4 allows the filing of a new application within 30 days of rejection for a curable defect, it does not authorize retention of the priority achieved by the first application and, hence, the new prospecting permit application has priority as of the date it is filed. UOP, Inc., 31 IBLA 142 (1977).

Appellant's contention that he received erroneous information from a BLM employee does not alter the result in this case. The oral advice that everything appeared to be in order did not constitute an adjudication of the application. An error of the type made by appellant would likely not be noticed until the application was adjudicated in the context of the land records. Reliance upon erroneous or incomplete information provided by Federal employees cannot create any rights not authorized by law. 43 CFR 1810.3(c).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Will A. Irwin
Administrative Judge